Supreme Court, U. S.
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IN THE

Supreme Court of the United States

NO. 76-18

LUIS ADAME FLORES, RUBEN MUNOZ
AND MERCADO GONZALEZ CHAPA,
Petitioners

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioners pray that this Honorable Court grant a Writ of Certiorari to review the judgment of the United States Court of Appeals, entered in the above cause on June 3, 1976.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is printed in Appendix A of this petition. It has not yet been reported.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit, printed as Appendix B of this petition, was entered on June 3, 1976, Petitioner's Motion for Rehearing having been denied on May 26, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

QUESTION PRESENTED

Does the warrantless search of an automobile without probable cause for which there was no evidence that it had ever crossed the Mexican Border nor come in close proximity thereto, but merely a showing that it was parked next to an automobile that had crossed the border approximately ninety-one (91) miles from the place of the search and over six hours prior to the search, constitute a violation of the constitutional guarantees of the Fourth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISION INVOLVED

The Constitutional provision involved is Amendment IV to the Constitution of the United States of America which provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, or things to be seized.

STATEMENT OF THE CASE

Government agents first became aware of the Defendants Luis Adame Flores, Trinidad Villareal Garcia and Mercado Gonzalez Chapa, at approximately 3:34 P.M. on the afternoon of March 22, 1975, when the three entered the United States at Laredo, Texas. At that point a search of the vehicle revealed marijuana residue (not a part of the contraband the possession of which Defendants stand charged). A personal search of the three Defendants revealed a key to room number nine at the Ran-Con Motel in Roma, Texas.

When the Defendants were permitted to leave the checkpoint, they were closely watched by Federal agents at all times from the bridge in Laredo to Roma. The 1971 dark blue Ford with the three Defendants, Luis Adame Flores, Trinidad Villarreal Garcia and Mercado Gonzalez Chapa, arrived at the Ran-Con Motel at approximately 6:15 P.M. Shortly thereafter, one of the men left in the 1971 Ford automobile, driving South on Highway 83, where he picked up Ruben Munoz. The automobile returned to the motel over forty-five (45) minutes later.

The surveillance was continued at the Motel. Some time later the four defendants left the motel without checking out with the motel manager, traveling into the Los Saenz area where they let Ruben Munoz out of the car. The other three then returned to the motel. There was no more activity until approximately 10:00 P.M. when a 1968 Cadillac drove into the motel parking area and parked beside the Ford. The occupant then entered Room 9.

At approximately 10:20 Luis Flores and Trinidad Garcia moved some packages of curios from the backseat of

their Ford into the trunk and removed a spare tire from the Cadillac and placed it in the Ford.

At 10:45 P.M. the Ford left the motel and was stopped approximately ¼ mile from the motel. At that point Luis Flores, Trinidad Garcia and Mercado Chapa were arrested. A warrantless search of the 1971 Ford was made immediately, with only Mexican curios, the spare tire from the Cadillac and the marijuana residue which does not form a part of the marijuana charged in the indictment.

Approximately two minutes after the Ford left the motel, Government agents arrested Ruben Munoz as he got into the Cadillac. An agent then got into the Cadillac to drive it to the Port of Entry at Roma to search it. Upon arrival at the Port of Entry the vehicle was searched and marijuana was found in the trunk. Again no warrant was obtained to search the Cadillac.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

This Court has repeatedly held that except in certain very limited circumstances a warrantless search violates the guarantees of the Fourth Amendment to the Constitution of the United States. The government has based its entire argument on the proposition that the search in the case at bar comes within the exceptions generally known as the "extended border search."

The "extended border search" doctrine arose in a number of cases decided primarily in the Fifth and Ninth Circuits, but has not been directly passed upon by this Hon-

orable Court. In view of the reasoning in *Almeida-Sanchez v. United States,* 413 U.S. 266, 93 S.Ct. 2535 (1973), the underlying premises upon which the "extended border search" doctrine is based are of very doubtful constitutional validity.

Although "it is settled, of course, that a stop and search of a moving automobile can be made without a warrant" as established in *Carroll v. United States,* 267 U.S. 132, 45 S.Ct. 280, "the *Carroll* doctrine does not declare a field day for the police in searching automobiles. Automobiles or no automobile, there must be probable cause for the search." *Almeida-Sanchez v. United States,* supra, at p. 269, p. 2537.

It is recognized that agents of the United States Government may stop and search an automobile "crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in", *Carroll v. United States,* 267 U.S. 132, 154, 45 S.Ct. 280, 285. However, the search of an automobile removed from the border by time and distance is wholly different.

Although the needs of national self-protection that may justify a warrantless search at the border without the existence of probable cause, once a vehicle passes through the border such justification is no longer present. The Government agent have the opportunity to search the vehicles at the border if they choose. If they do not, then they should not be permitted to later stop the vehicle to search it again. Such an intrusion violates citizens' right to be free from warrantless searches.

"The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards." *Almeida-Sanchez v. United States,* supra, at p. 273, p. 2540. The right of all American citizens who travel across the two international borders to be free from multiple and harassing searches without probable cause simply because they choose to leave this country is abrogated by the "extended border search" doctrine.

The facts of the case at bar further extend the pernicious effects of the "extended border search" doctrine. Not merely is the vehicle that crossed the border searched, but an automobile is searched that merely came into proximity to the vehicle that crossed the border.

In the case at bar there was no showing that the 1968 Cadillac in which all the marijuana was found ever crossed the border or came into close proximity with it. The only evidence introduced was that it was parked beside the 1971 Ford which did cross the border. None of the persons who crossed the border were shown to have driven in the Cadillac. Only Ruben Munoz, the original driver, was ever shown to have driven or been a passenger in the Cadillac. No goods or objects of any sort were ever shown to have been placed in the Cadillac from the Ford.

Furthermore, it is clear that the search in the case at bar was so far removed from the border that it does not come within the "extended border search" doctrine. Over seven hours and 91 miles elapsed from the time the 1971 Ford crossed the border and the time the search of the

1968 Cadillac revealed the marijuana for which Petitioners were convicted. Such great distance and length of time from the border crossing is an unreasonably great distance from the border. Also, too much time elapsed from the border entry.

The criteria that the Court have held must be present to justify an "extended border search: are (1) "reasonable cause at the time of the search to suspect a violation of the the customs laws;" some "reasonably direct connection with the border, considering such factors as the cause for the initiation for the search, the distance from the border and the original point of entry, and the time elapsed since entry." *United States v. Bowman,* 502 F.2d 1215 (U.S.C.A. 5th Cir., 1974). In *United States v. Majourau,* 474 F.2d 766 (U.S.C.A. 9th Cir., 1973), the Court held that a search conducted between 80 and 90 miles from the border crossing and three hours after such border crossing was too far removed from the border to be an "extended border search."

In the case at bar there is no showing whatsoever of a "direct connection with the border"[1] by the 1968 Cadillac in which the marijuana was found. There was no testimony that it ever crossed the border nor ever was in close proximity to it. The search of the Cadillac was over seven hours after the 1971 Ford crossed the border, which is more than twice as long as the time held by the 9th Circuit in *United States v. Majourau* to be too long. The search was approximately 91 miles from the point the 1971 Ford crossed the border.

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1. *United States v. Bowman, supra,* at 1219.

Even if this Honorable Court finds the "extended border search" doctrine to be constitutionally valid, the facts of the case at bar can not be held to be within constitutionally reasonable limits of the doctrine. It seems obvious that simply crossing the border does not justify a search for all time and places following that crossing. The limits to the doctrine as set out in *United States v. Majourau*, supra, seem as great as the Fourth Amendment to the United States Constitution permits.

The rights of the many travelers who every day cross the borders with our two neighboring countries to be free from harassing searches is raised by this case. The Government contends that once a citizen crosses an international border he may be followed for many hours and many miles, and then stopped and his automobile searched. Such following and searching are an unconstitutional intrusion on the rights of many Americans that will continue unless this Honorable Court grants Petitioner's Writ of Certiarari for review and eventual reversal of the conviction.

Resolution of this question favorably to Petitioners would require a holding that the evidence seized as a result of the search be suppressed, which would require a new trial since there would be no evidence to sustain Petitioners' conviction.

We urge the Court to make such a holding and, on the basis thereof, to reverse the judgment of the United States Court of Appeals and remand the case for new trial.

CONCLUSION

For the reasons given above, a writ of certiorari should be granted.

Respectfully submitted,

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By: _____
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APPENDIX A

UNITED STATES of America,
Plaintiff-Appellee,

v.

Luis Adame FLORES, Ruben Munoz, and
Mercado Gonzalez Chapa,
Defendants-Appellants.

No. 75-3560.

UNITED STATES COURT OF APPEALS,
Fifth Circuit.

April 30, 1976.

Defendants were convicted before the United States District Court for the Southern District of Texas, Reynaldo G. Garza, Chief Judge, of possession of marijuana and of conspiracy to possess the marijuana with intent to distribute, and they appealed. The Court of Appeals, Godbold, Circuit Judge, held that warrantless search of second automobile, even though it was not known to have crossed the border and even though several hours had elapsed since first automobile had crossed border, was justified as an extended border search, in view of overall nexus with border, geographical proximity of city where alleged narcotics transaction took place to the border, the ongoing surveillance and activities that had been observed and the contacts of second automobile and its occupants with first automobile and its occupants.

Affirmed.

Appeal from the United States District Court for the Southern District of Texas.

Before WISDOM, GODBOLD and LIVELY,* Circuit Judges.

GODBOLD, Circuit Judge:

This is a border search case involving 205 pounds of marijuana found in the warrantless search of a Cadillac automobile. Appellants were convicted of conspiracy to possess the marijuana with intent to distribute and of possession of the marijuana. At approximately 3:45 p.m. on March 22, 1975, appellants Flores and Chapa and a nonappealing defendant, Garcia, traveling in a Ford car, crossed the border into Texas at Laredo. Suspicion was triggered by the reactions of a border dog trained to react to the smell of various contraband substances. The car was searched and marijuana seeds and leaves found in the rear seat and trunk. This marijuana is not the subject of the indictments involved in this case. A search of defendants produced a key to Room 9 of a motel in Roma, Texas. Roma, like Laredo, is a border town located on the United States side of the Rio Grande River. It is reached from Laredo by following U.S. Highway 83 approximately 90 miles in a southeasterly direction. The highway generally parallels the Rio Grande between the two cities.

The three suspects were released but placed under, and kept under, surveillance. They arrived at the motel in Roma at approximately 6:15 p.m. Shortly thereafter one of the men left in the Ford, drove south on highway 83, picked up appellant Munoz, and returned to the motel.

* Of the Sixth Circuit, sitting by designation.

Later all four men left the motel and traveled to a nearby area where Munoz was let out of the car. The remaining three men returned to the motel. At approximately 10:00 p.m. a Cadillac parked alongside the Ford and the occupant entered Room 9. At approximately 10:20 p.m. packages were removed from the rear seat of the Ford to the trunk, and a spare tire was removed from the rear seat of the Cadillac to the rear seat of the Ford. At 10:45 p.m. the Ford left the motel. Officers stopped it approximately one-quarter mile away and arrested occupants Flores, Chapa and Garcia. A warrantless search was made of the car. It produced no drugs other than the marijuana leaves and seed previously found.

Approximately two minutes after the Ford left the motel, agents arrested Munoz as he got into the Cadillac at the motel. The Cadillac was taken to the border entry point at Roma and there was searched without warrant. The 205 pounds of marijuana which is the subject of this case was found in the trunk.

There was adequate basis for a reasonable suspicion by the officers that the four men were involved in a narcotics transaction, although the precise nature of the transaction was not known. There were various possibilities: that in the Ford there was additional marijuana that had not been discovered at Laredo; that the parcels removed from the back seat to the trunk of the Ford contained marijuana or other contraband; that the spare tire removed from the rear seat of the Cadillac to the rear seat of the Ford contained narcotics; that the Cadillac spare tire was in the rear seat of the Cadillac rather than the trunk so as to make room in the trunk (or more specifically in the tire well) for something else; that the

tire was transferred to the Ford so as to remove it from open view in the back seat of the Cadillac where its presence in this unusual location might trigger suspicion of the contents of the Cadillac trunk; that contraband either had been or was proposed to be transferred from one vehicle to the other in some manner not known or precisely foreseen by the officers.

The search of the Cadillac was a border search. The Cadillac was not known to have crossed the border. Several hours had elapsed since the Ford had crossed. Bearing in mind the overall nexus with the border, the geographical proximity of Roma to the border, the ongoing surveillance and the activities that had been observed, the contacts of the Cadillac and its occupant with a car, and its occupants, which had recently crossed the border, the search of the Cadillac was an extended border search.[1] *U. S. v. Bowman,* 502 F.2d 1215 (C.A. 5, 1974); *U. S. v. Storm,* 480 F.2d 701, 704 (C.A. 5, 1973); *U. S. v. Newell,* 506 F.2d 401, 404 (C.A. 5, 1975).

AFFIRMED.

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1. No question is raised of when appellants Flores and Chapa could be found to be in possession of the marijuana found in the Cadillac. All defendants received concurrent sentences on the possession and conspiracy counts.

APPENDIX B

UNITED STATES COURT OF APPEALS
For The Fifth Circuit

October Term, 1976

No. 75-3560

D. C. Docket No. CR-75-B-175

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

LUIS ADAME FLORES, RUBEN MUNOZ, and MERCADO GONZALEZ CHAPA,
Defendants-Appellants.

Appeal from the United States District Court for the Southern District of Texas

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Before WISDOM, GODBOLD and LIVELY,* Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

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* Of the Sixth Circuit, sitting by designation.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

April 30,1976

Issued as Mandate: June 3, 1976

No. 76-18

Supreme Court, U. S.
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In the Supreme Court of the United States

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LUIS ADAME FLORES, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-18

LUIS ADAME FLORES, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the warrantless search of their automobile by customs agents violated the Fourth Amendment.

Following a jury-waived trial in the United States District Court for the Southern District of Texas, petitioners were convicted of possessing with intent to distribute 205 pounds of marihuana and of conspiring to commit that offense, in violation of 21 U.S.C. 841(a)(1) and 846. Petitioner Flores was sentenced to concurrent terms of four years' imprisonment on each count, to be followed by a term of two years' special parole; petitioner Munoz was sentenced to concurrent terms of five years' imprisonment on each count, of which all but six months was suspended in favor of five years of supervised probation, to be followed by a special parole term of three years; and petitioner Chapa was sentenced to concurrent terms

of four years' imprisonment on each count, to be followed by a special parole term of three years. The court of appeals affirmed (Pet. App. A).[1]

The facts are set forth in the opinion of the court of appeals (Pet. App. 12-13). At approximately 3:45 p.m. on March 22, 1975, petitioners Flores and Chapa, together with co-defendant Garcia, crossed the Mexican-American border into Laredo, Texas, in a Ford automobile. After a dog trained to respond to the smell of contraband substances reacted to the car, customs officials searched the automobile. They found marihuana seeds and leaves in the trunk. They also found a room key for a motel in Roma, Texas—a border town 90 miles southeast of Laredo. The contents of the trunk were left undisturbed. The agents released the car's occupants but placed them under surveillance.

At about 6:15 p.m., Flores, Chapa, and Garcia arrived at the motel in Roma. One of the men left the motel in the Ford, picked up petitioner Munoz, and then returned to the motel with him. All four men later left the motel together and traveled to a nearby area where petitioner Munoz got out of the car. The others returned to the motel. At about 10:00 p.m., a Cadillac pulled up alongside the Ford at the motel and its driver entered petitioners' room. Shortly thereafter, the suspects moved packages from the rear seat of the Ford to its trunk and moved a spare tire from the rear seat of the Cadillac to the rear seat of the Ford. At 10:45 p.m., the Ford left the motel; customs

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[1]The judgment of the court of appeals (Pet. App. B) was entered on April 30, 1976, and a petition for rehearing was denied on May 26, 1976. The petition for a writ of certiorari was not filed until July 1, 1976, and is therefore out of time under Rule 22(2) of this Court's Rules.

officials stopped it a quarter-mile away. The agents arrested petitioners Flores and Chapa and co-defendant Garcia. In the search that followed only the marihuana seeds and leaves that had previously been found at the border were again uncovered. Approximately two minutes after the Ford left the motel, agents arrested petitioner Munoz as he entered the Cadillac. This automobile was taken to the border entry point at Roma and searched without a warrant. The 205 pounds of marihuana that petitioners were charged with possessing was found in the trunk of the Cadillac.

Petitioners contend that the search of the Cadillac without a warrant was unlawful and that the marihuana should have been suppressed. It is settled, however, that routine searches of automobiles, even in the absence of reasonable suspicion, may properly be conducted at the border or its functional equivalents. *Almeida-Sanchez* v. *United States*, 413 U.S. 266, 272-273. Because "[i]t is simply not possible * * * to police the borders effectively if enforcement is confined to the border itself and its immediate vicinity * * * [t]he Fourth Amendment * * * allows reasonable latitude to customs officials to carry out searches for contraband somewhat within the nation's borders, in the general border area." *United States* v. *Bowman*, 502 F. 2d 1215, 1219 (C.A. 5). Such an " 'extended border search' " may be made without a warrant if the agent has a reasonable suspicion of illegal activity and if the vehicle or its occupants have "some reasonably direct connection with the border" (*ibid.*). It is not essential to show that the vehicle itself crossed the border. It is enough if "the vehicle or its passengers have * * * been in touch with those who have" recently crossed the border. *United States* v. *Storm*, 480 F. 2d 701, 704, n. 5 (C.A. 5); *United States* v. *Newell*, 506 F. 2d 401, 404 (C.A. 5).

The court of appeals here correctly concluded that the search of the Cadillac was an "extended border search." First, "although the precise nature of the transaction was not known," the agents had "adequate basis for a reasonable suspicion * * * that the four men were involved in a narcotics transaction" (Pet. App. 13).[2] Second, the court correctly determined that the Cadillac had a reasonably direct connection with the border, even though it may not itself have crossed the border (Pet. App. 14):

> Several hours had elapsed since the Ford had crossed. Bearing in mind the overall nexus with the border, the geographical proximity of Roma to the border, the ongoing surveillance and the activities that had been observed, the contacts of the Cadillac and its occupant with a car, and its occupants, which had recently crossed the border, the search of the Cadillac was an extended border search.

Further review of the court's factual determination is not warranted.

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[2]The court stated (Pet. App. 13):

> There were various possibilities: that in the Ford there was additional marijuana that had not been discovered at Laredo; that the parcels removed from the back seat to the trunk of the Ford contained marijuana or other contraband; that the spare tire removed from the rear seat of the Cadillac to the rear seat of the Ford contained narcotics; that the Cadillac spare tire was in the rear seat of the Cadillac rather than the trunk so as to make room in the trunk (or more specifically in the tire well) for something else; that the tire was transferred to the Ford so as to remove it from open view in the back seat of the Cadillac where its presence in this unusual location might trigger suspicion of the contents of the Cadillac trunk; that contraband either had been or was proposed to be transferred from one vehicle to the other in some manner not known or precisely foreseen by the officers.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1976.